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XI.

The statutes of the various States and territories relating directly to telephone companies are subjoined. The statutes relating to the telegraph extend also to the telephone (*supra*), but are too numerous for citation here.

The State of Alabama has enacted (Code of 1887)—

§ 454. There shall also be assessed by the assessor in each county, for taxation, the following subjects at the following rates :—

6. On the gross amount of the receipts by any and every telegraph, telephone, and express company, derived from the business done by it in this State, at the rate of two dollars on the hundred dollars.

§ 508. The president, secretary, or manager of every telephone company, owning or operating lines, must annually, on or before the first day of May, make under oath to the assessor of the county in which such instruments are located, or such lines are operated, a return of the property, and receipts required by this article to be made by the officers or agents of telegraph companies to the auditor; and in case such return is not made by any company within the required time the assessor must ascertain, from the best information he can obtain, the amount and value of such property, and the amounts of such receipts; and on the property and receipts so returned or ascertained, the assessor shall assess the taxes against such company; and when there has been a failure on the part of any company to make a return of such property and receipts within the required time, the assessor shall add to the assessment against such company a penalty of fifty per cent. on the amount thereof. Such assessment, as well as the assessment of other taxable property of such company in the county, must be entered by the assessor in the book of assessments.

§ 504. The president, secretary, auditor, or managing agent in this State of every telegraph company whose line, or any part thereof, is within the State, must annually, on or before the first day of April of each year, make, under oath, to the auditor, a return of the number of miles of telegraph wire in the State belonging to such company, and the value thereof, and the number of poles, batteries, instruments, and articles of all kinds in the State connected with its business, and the value thereof, specifying the several counties in which such property is situated, and the value of the property situated in each of such counties, and also the gross receipts of such company from its business done in the State during the preceding year; and if any of such companies, its officers, or agents fail to make such return within the times specified, the auditor must ascertain such items of property, values, and receipts from the best information he can obtain.

§ 3219. A telegraph or telephone company, incorporated under the laws of another State, proposing to extend connecting lines into this State, may acquire an easement for the uses and purposes of such connecting lines, and may pursue the mode of proceeding prescribed in this article.

[That is, for the condemnation of lands for public uses.]

Arkansas has enacted (Digest, 1883)—

§ 5645. Gas, telephone, bridge, street railroad, savings banks, mutual loan, building, transportation, construction, and all other companies, corporations, or associations, incorporated under the laws of this State, or under the laws of any other State, and doing business in this State, other than insurance companies and the companies and corporations whose taxation is in this Act specifically provided for, in addition to their property required by this Act to be listed, shall, through their president, secretary, principal accounting officer, or agent annually, during the month of March, make out and deliver to the assessor of the county where said company or corporation is located or doing business, a sworn statement of the capital stock, setting forth particularly:—

First. The name and the location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up, its market value, and if no market value, then the actual value of the shares of stock.

Fourth. The total amount of all indebtedness, except indebtedness for current expenses, excluding from such indebtedness the amount paid for the purchase or improvement of the property.

Fifth. True valuation of all the tangible property belonging to such company or corporation; such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts.

§ 5646. The assessor shall annually, at least ten days before the twenty-eighth day of February, deliver to the president, secretary, accounting officer, or agent of any such company, corporation, or association located in or doing business in such county, a notice in writing to return such schedule by the twenty-first day of March next ensuing. Any president, secretary, principal accounting officer, or agent of any such companies or corporations, upon whom such notice shall have been served, wilfully neglecting or refusing to make such return by the twenty-first day of March next ensuing, after delivery of said notice, shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding three months, or both, and the assessor shall, from the best information he can obtain, make out and enter upon the proper assessment-roll a list with the valuation of all tangible and intangible property belonging to such defaulting company or corporation subject to taxation by the provisions of this Act, with fifty per cent. penalty.

Connecticut has enacted (Gen. Stat., Revision of 1887)—

§ 3943. No person or corporation building and maintaining telegraph, telephone, or electric light or power wires or fixtures, or electrical wires, conductors, or fixtures of any kind in this State, shall, by reason of any occupation or use of any buildings or lands for the support of the wires of said person or company, or by reason of said wires passing over or through any buildings or lands, acquire by the continuance of such use or occupation, any prescriptive right to so occupy or use the same.

§ 3944. Every telegraph or telephone company may maintain and construct lines of telegraph or telephone upon any highway, or across any waters in this

State, by the maintenance and erection of the necessary fixtures, including posts, piers, or abutments for sustaining wires ; but the same shall not be so constructed as to incommode the public travel or navigation, nor to injure any tree without the consent of the owner ; nor shall such company construct any bridge across any waters ; and said lines shall be personal property.

§ 3945. No telegraph, telephone, or electric light company or association, nor any company or association engaged in distributing electricity by wires or similar conductors, or in using an electric wire or conductor for any purpose, may hereafter exercise any powers which may have been conferred upon it to erect or place wires, conductors, fixtures, structures, or apparatus of any kind over, on, or under any highway or public ground, or to change the location of the same, without the consent of the adjoining proprietors, or in case such consent cannot be obtained, without the consent in writing of two of the County Commissioners of the county in which it is desired to exercise such powers, which shall be given only after a hearing upon due notice to such proprietors ; and the fees of such commissioners shall be paid by such company.

§ 3946. The selectmen of any town, the common council of any city, and the warden and burgess of any borough shall, subject to the provisions of the preceding section, within their respective jurisdictions, have full direction and control over the placing, erection, and maintenance of any such wires, conductors, fixtures, structures, or apparatus, including the re-locating or removal of the same, and including the power of designating the kind, quality, and finish thereof, and may make all orders necessary to the exercise of such power of direction and control, which orders shall be in writing and recorded in the records of their respective communities, but shall be subject, nevertheless, to the right of appeal by said company to a judge of the Superior Court, who, after a hearing, upon due notice to all parties in interest, shall, as speedily as possible, determine the matter in question, and affirm, modify, or revoke said order.

§ 3947. Any judge of the Superior Court may at any time make any proper order with reference to the erection, placing, or maintaining of any such wires, conductors, fixtures, structures, or apparatus, including the relocating and removal thereof, and may review any decision of the County Commissioners rendered under the provisions of section 3945, upon the application of the State's Attorney of that jurisdiction, or of any party interested, upon a hearing, after due notice to all parties concerned.

§ 3948. Any judge of the Superior Court may, upon the application of any party interested, and after due notice, unless the application has been unreasonably delayed, appoint three disinterested persons to make a written appraisal of all damages which may be due to any person by reason of anything which may have been done under any or all of the four preceding sections ; and said appraisal, when approved by such judge, shall be returned to and recorded by the clerk of the Superior Court in the county where the cause of action arose, and thereupon the sum specified therein shall be paid immediately by the company to the party entitled to the same ; or the judge may order the same to be paid immediately into the hands of said clerk, to be delivered by him on demand to said party ; and the costs of such proceeding shall be taxed by said judge

and paid by said company, and he may issue execution therefor and for such damages.

§ 3949. When it shall be necessary to cut or otherwise disconnect the wires of telegraph, telephone, electric light, or other company or association hereinbefore referred to, or to remove them from the poles or fixtures to which they may be attached for the transportation of any objects on the highways or upon any waterways, any person may do so, exercising reasonable care therein; *provided*, that before doing so he shall leave a statement, in writing, particularly describing the time when and the place where he wishes to disconnect such wires, at the office of such company, if any there be in the town where such place is situated, twenty-four hours before the time so stated; and if such company has no office in the same town, he shall send such statement to its office nearest to the place named therein by putting it into the post office, properly directed and stamped, three days before the time stated therein.

§ 3951. The stockholders of every telegraph, telephone or electric light or power company, organized under the laws of this State, shall be jointly and severally liable for the payment of all its debts contracted during the time of their holding stock therein, to the extent of twenty-five per cent. of the amount of stock held by them respectively, if a judgment thereon shall have been obtained by the claimant against the company, and an execution thereon shall have been returned unsatisfied, or if such company shall be dissolved.

§ 3952. Telegraph or telephone companies shall receive dispatches from any person, and for other telegraph or telephone lines, and shall transmit them in the order of time in which they are received, on payment of their usual charges, under the penalty of one hundred dollars for every neglect so to do, to be recovered with costs by the party aggrieved; but arrangements may be made with publishers of newspapers for the transmission of news out of its general order, and all communications for officers of justice shall take precedence of all other dispatches.

§ 3954. The mortgage by any telegraph or telephone company to secure its bonds, or other evidences of indebtedness of all or any part of its lines, appliances, machines or machinery, whether owned by it at the date of said mortgage, or those thereafter to be acquired by it, or both, shall be valid and effectual as respects all the property therein included as aforesaid, and may be foreclosed in the same manner as mortgages of real estate, and the record thereof, in the office of the secretary of the State, shall be a sufficient record and notice to protect the title under the mortgage, notwithstanding such company may remain in possession of all or any part of the mortgaged property.

Dakota has enacted (Compiled Laws, 1887)—

§ 3025. There is hereby granted to the owners of any telegraph or telephone lines operated in this Territory, the right of way over lands and real property in this Territory, and the right to use public grounds, streets, alleys, and highways in this Territory, subject to the control of the proper municipal authorities as to what grounds, streets, alleys, or highways said lines shall run over or across, and the place the poles to support the wires are located; the right of way over real property granted in this Act may be acquired in the same manner and by like proceedings, as provided for railroad corporations.

Illinois has enacted by a law in force from July 1, 1883 (Laws, p. 173; Rev. Stat. 6th ed. p. 1471)—

§ 1. It shall be lawful for any person or persons living on the line of any public highway, street, or alley, outside of any incorporated city, village, or town in this State, or on any private road leading to such highway, street, or alley, to construct, operate and maintain a line, or lines, of telegraph or telephone extending from house to house, as the parties interested in the construction of such lines may desire.

§ 2. For the purpose of constructing and maintaining such lines of telegraph or telephone, the parties in interest may set the necessary poles or posts on which to place the wires and insulators of such lines, in any of the public streets, highways, or alleys, or in any private road leading to such highways, streets, or alleys outside of the incorporated cities, villages, or towns in this State, along which such lines may pass; *provided*, such poles or posts shall be placed along the boundaries of such highways, streets, or alleys, at such distances therefrom as the authorities having control thereof may direct; *and provided further*, that the wires necessary for such lines shall not be less than fifteen feet above the ground along such boundaries, and not less than twenty feet at any public or private crossing, and shall be so placed as not in any manner to interfere with such crossing.

§ 3. Any person who shall unlawfully and intentionally injure, molest, or destroy any of said lines, or the material or property belonging thereto, or shall in any manner interfere with the proper working of such lines, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding one hundred dollars; said fine to be recoverable in any Court having jurisdiction of the same; *provided*, that prosecution under the foregoing provision of this section shall not, in any manner, prevent a recovery by the person or persons entitled thereto, of the amount of damages done to such lines.

Illinois has also enacted, by a statute in force from July 1, 1887 (Laws, p. 298; Rev. Stat. 6th ed. p. 1472), that—

§ 1. Whenever any wire, pole, or cable used for any telegraph, telephone, electric light, or other electric purpose, or for the purpose of communication, is or shall be attached to, or does or shall extend upon or over any building or land, no lapse of time whatever shall raise a presumption of any grant of, or justify a prescriptive right to, such attachment or extension.

Indiana has enacted, by a statute in force from April 7, 1881 (Rev. Stat. ed. 1888, chap. 43, §§ 4181, 4192)—

§ 1. Any number of persons may form themselves into a corporation for the purpose of establishing, maintaining, and operating telephones, telephone lines, and telephone exchanges within the State of Indiana, by complying with the requirements of this Act.

§ 2. They shall join in the execution of articles of association, setting forth the name assumed, the counties or places within which such company proposes to establish, maintain, and operate telephones and telephone exchanges, the

amount of capital stock, and the number of shares into which it is divided. The stockholders who incorporate such association shall each sign such articles, giving his place of residence and the amount of stock subscribed for by him, five of whom (if there be so many signers) shall acknowledge the execution of such articles before some officer authorized to take acknowledgments of deeds, and the articles shall thereupon be recorded in the office of the Secretary of State.

§ 3. As soon as such articles are filed for record in the office of the Secretary of State, such company shall be deemed and held to be a corporation, by the name specified in the articles of association, and in its corporate name shall be capable of suing and being sued, pleading and being impleaded, defending and being defended, in any Court of competent jurisdiction.

§ 4. The stockholders shall elect, from among their number, not less than three nor more than nine directors, a majority of whom shall be residents of this State, who shall hold office for one year and until their successors are elected. Notice of the election of directors shall be given by publication, for two weeks successively, in some newspaper published in the county in which the principal office is located.

§ 5. The principal office of said company shall be maintained in this State. The board of directors shall organize within ten days after said election, by choosing one of its members president (who may also be superintendent), and a secretary and a treasurer (which two offices may be filled by the same person), and such other officers as may be necessary.

§ 6. The board of directors shall adopt by-laws for the government of the corporation and management of its business; and shall cause to be kept a full and complete record of its proceedings, in a book provided for that purpose; and such record, or copies duly proved, may be read in evidence when the interests of the corporation are concerned.

§ 7. Such company may have a common seal, which may be altered at pleasure, and shall have power to acquire, by purchase or otherwise, and hold and convey, such real and personal estate as may be proper for the purpose of erecting and maintaining its lines of telephone and the appliances and buildings requisite for its business; and shall have the right to acquire such real estate and rights of way as may be necessary for its business, under the writ of assessment of damages, as fully as if the Act in relation to said writ were incorporated in this Act and made part of the same. The life of a corporation organized under this Act shall be limited to fifty years.

§ 8. Any telephone company organized under this Act shall have power to lease, or attach to other telephone lines or exchanges by lease or purchase.

§ 9. A railroad company may become a stockholder in any telephone or telephone exchange company.

§ 10. A telephone company shall not be liable for errors in messages or communications, except when such messages or communications are transmitted under contract directly by the agents or employes of the company; nor shall it be liable for any special damage sustained by a failure of its instruments to work, beyond a rebate of the rent charged for the time such instruments failed to work.

§ 11. The board of directors shall have power to make assessments, from time to time, on the stock to the extent, in the aggregate, of its face value,

for the purpose of repairing or extending its lines ; and it may also, with the consent of a majority of the stockholders, increase the capital stock for the purpose aforesaid. It may also, in its by-laws, determine the manner in which the stock of the company shall be held and assigned.

§ 12. Every stockholder shall be liable in his individual capacity, for any contract, debt, or engagement of such company to an amount over and above his stock, equal to the face value of his stock.

Indiana has also enacted by a statute in force from February 13, 1883 (Laws, p. 9 ; Rev. Stat. ed. 1888, chap. 43, § 4192, d.) :—

§ 1. Any operator, clerk, servant, messenger, or employé of any telephone company doing business in this State, who discloses the contents of any dispatch, or message, or any conversation had between persons while using the line of any telephone company, except to a Court of justice, or to a person entitled to know the same, shall be fined not more than five hundred dollars, nor less than ten dollars.

JOHN B. UHLE.

(To be continued.)

RECENT ENGLISH CASE.

High Court of Appeals.

BUTLER v. THE MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.

Where a by-law of a railway company provides that a passenger failing or refusing to show or deliver up his ticket, when requested by a duly authorized agent of the company, shall be required to pay his fare from the station whence the train started, but such by-law makes no provision for enforcing this requirement, a passenger who has bought a ticket on condition of compliance with the by-laws, and has lost it, cannot be removed from the train for refusing to comply with such by-law.

The right to remove a passenger for non-compliance with such a by-law cannot be implied as part of the contract of carriage.

Semble, per Lord ESHER, M. R., that the by-law in question is not reasonable.

Semble, per LOPES, L. J., that no regulation providing for removal of a passenger from a train, for non-compliance with such a by-law, could be framed.

APPEAL from a judgment of MANISTY, J., in the Queen's Bench Division, at the trial of an action for assault.

The plaintiff had taken a ticket from Sheffield to Manchester and back, the ticket being marked, "subject to the conditions contained in the company's time-tables and advertisements." One of these conditions was a by-law stating